IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE CIVIL JURISDICTION

WRIT PETITON NO.401 OF 2001

Municipal Corporation for the City
of Kalyan and Dombivli. Through
its Commissioner, having office
at Shankarrao Chowk, Kalyan,
Dist.Thane. .. Petitioner
(Orig.Opponent)

v/s.

Shri R.C.Baania,
Adult,Occup:Service,
R/o.18/9, Mari Nivas, Dindayal
Marg, Dombivli (West),
Dist.Thane. .. Respondent
(Orig.Applicant)

ALONGWITH

WRIT PETITION NO.1042 OF 2002

Ramesh Chhotelal Baania,
Residing at 18/9, Mari Nivas,
Dindayal Marg, Dombivli (West),
Dist.Thane. .. Petitioner

v/s.

Municipal Corporation for the City
of Kalyan and Dombivli. Through
its Commissioner, having office
at Shankarrao Chowk, Kalyan,
Dist.Thane. .. Respondent

Mr.J.M.D'Silva for the petitioner.

Mr.A.S.Rao for the respondent.

CORAM : SMT.NISHITA MHATRE, J.

DATED : 14th September, 2005

ORAL JUDGMENT

Writ petition No.401 of 2001 has been filed

by the Municipal Corporation for the City of Kalyan and Dombivli and writ petition No.1042 of 2002 has been filed by the concerned employee. Both these writ petitions impugned the order of the Industrial Court dated 31st July, 2000.

2. The workman was employed in 1978 as an X'Ray Technician in the Shastri Nagar Hospital run by the Dombivli Municipal Council. On 1st October, 1983, the Government of Maharashtra issued a notification under the Bombay Provincial Municipal Corporation Act and constituted the Municipal Corporation comprising the Dombivli Municipal Council, Badlapur Municipal Council and Ambernath Municipal Council. Certain other village panchayats surrounding these areas were also notified and included in the new Municipal Corporation. This Municipal Council or the Corporation was known as Kalyan Municipal Corporation. Accordingly, the services of the workman were deemed to have been merged with the Kalyan Municipal Corporation. On 20th October, 1990, the workman was transferred from the hospital where he was working to Ambernath which falls within the jurisdiction of Kalyan Municipal Corporation. The workman did not report for duty in the place of transfer as he was suffering from bronchial asthma. A medical certificate to that effect was submitted by him to the Corporation. Another letter was issued to the workman on 7th

November, 1990 directing him to report for duty in the hospital at the Ambernath division of Kalyan Municipal Corporation. On 16th November, 1990, the workman informed the Corporation that he was unable to report for duty due to his illness. No action was taken against the workman till 15th July, 1991, when a show-cause notice was issued to him. The workman replied to the said show-cause notice. Not being satisfied with that reply, the Corporation proceeded against the workman in a disciplinary enquiry. While the enquiry was pending, the Government of Maharashtra on 14th April, 1992 issued notification deleting the Division of Ambernath and Badlapur from Kalyan Municipal Corporation and a separate Municipal Council of Ambernath and Badlapur was formed. The notification also stipulated that those employees who were on the rolls of the Divisions become employees of the respective Municipal Councils. Despite the divisions having been reconstituted as separate Municipal Corporations, the Kalyan Municipal Corporation continued with the enquiry which was instituted against the workman. On 17th August, 1992, the enquiry officer found that the workman had committed an act of misconduct by not reporting to work at Ambernath division and therefore, the order of stopping three increments was issued by Kalyan Municipal Corporation. Aggrieved by this decision, the workman filed a

complaint under Item 9 of Schedule 4 of the MRTU & PULP Act on 16th August, 1993. The Industrial Court by its interim order directed the Corporation to allow the workman to report for duty with the Corporation or to pay him 80% of the wages. By an order dated 31st July, 2000, the Industrial Court disposed of the complaint by concluding that the order imposing punishment on the workman was legal; that the Corporation had committed an unfair labour practice under sections 9 and 10 of Schedule IV of the MRTU & PULP Act by not permitting the workman to report for duty after he submitted a fitness certificate; that the workman was entitled to wages from 19th August, 1992 till he was permitted to join duty. Both the corporation and the workman being aggrieved by this decision of the Industrial Court, have approached this court under Articles 226 and 227 of the Constitution of India.

3. Mr.Rao, the learned counsel appearing for the Corporation submits that the Industrial Court has wrongly held that the Corporation had committed an unfair labour practice under sections 9 and 10 of schedule IV of the MRTU & PULP Act. He submits that after formation of the Corporation of Ambernath, the Kalyan Municipal Corporation is not liable to pay any wages to the workman. According to the learned advocate, in any event, the services of the workman have been transferred to Ambernath

after the amalgamation of 1983. In such circumstances, he submits that the Industrial Court ought not to have fastened the liability of paying the wages on the Corporation and ought not to have declared that the Corporation has committed unfair labour practice. He placed reliance on the judgment of the Division Bench of this court in the case of The Administrator/Commissioner, Municipal Corporation for the City of Kalyan and Dombivli v. Shri Amarsingh Babu Gaud and ors. (Writ Petition No.7798 of 2004).

4. Mr.D'Silva, the learned counsel appearing for the workman submits that the workman has not challenged the transfer order. However, he has challenged the imposition of penalty of stoppage of three increments. According to him, such a penalty ought not to have been imposed by Kalyan Municipal Corporation if it is the claim of the Corporation that he was no longer their employee but the employee of Ambernath Municipal Corporation. According to the learned advocate, when the workman was appointed in 1978, the Corporation was not associated with any other council. It was thereafter, in 1983 by Maharashtra Government Notification, certain other corporations were amalgamated in Kalyan Municipal Corporation. He was an employee of Kalyan Municipal Corporation. Therefore, the Corporation had issued chargesheet

to him and had held an enquiry. However, since the Corporation had been split into various smaller corporations in 1992 during the pendency of the enquiry, it was necessary that the enquiry should have been dropped by the Kalyan Municipal Corporation. However, having chosen to proceed with the same, it obviously means that the Kalyan Municipal Corporation has accepted the workman as its employee. The learned advocate submits that imposition of stoppage of three increments is too harsh a punishment for the workman.

5. In my view, the notification of 1st October, 1983 clearly merged certain areas of Dombivli, Badlapur and Ambernath and certain surrounding villages into one Municipal Corporation known as Kalyan Municipal Corporation. The workman was continuously an employee of the Kalyan Municipal Corporation, even after the notification was issued. It was only on 20.10.1990, his services were sought to be transferred to the Ambernath Division. The employee had contended that he was suffering from bronchial asthma and should not be transferred in view of the pollution which he would have to face during the course of travel from his place of residence to Ambernath.

6. The Enquiry Officer held the workman guilty of the misconducts alleged against him viz. of not

reporting at his place of transfer and of remaining absent from work at Ambernath, without prior permission. It cannot be doubted that the workman was suffering from bronchial asthama. In fact he was under treatment as certified by the doctor attached to the Corporation. He was absent only because he was not medically fit and had been advised rest by the doctor. In my view, the stoppage of three increments, having permanent effect, is too harsh a punishment.

7. The notification issued in 1992, deleting the Division of Ambernath from Kalyan Municipal Corporation, also stipulate those employees who were on the role of the Division would be deemed to be employees of the respective Municipal Councils. However, each employee was entitled to exercise his option as to whether he wished to continue as an employee of the newly constituted Municipal Council or of Kalyan Municipal Corporation. The workman has not been given this option at all only because the enquiry was pending against him. The employee must be given an option just as the other employees have been able to exercise when the notification was issued in 1992.

8. In any event, the liability of payment of wages for the period from 19th August, 1992 as declared by the Industrial Court must be accepted by the

Kalyan Municipal Corporation since it has continued the workman as its employee and has imposed punishment on him. The Kalyan Municipal Corporation has chosen to continue the workman in their service and therefore, they must pay wages as directed by the Industrial Court.

9. Petition is disposed of accordingly. No order as to costs.

10. The wages payable to the workman shall be paid of by the Corporation within eight weeks from today.

(SMT.NISHITA MHATRE, J.)